

## Department of the Navy, DoD

## § 776.42

each individual concerning the decisions to be made and the considerations relevant in making them, so that each individual can make adequately informed decisions.

(c) A covered attorney shall withdraw as a mediator if any of the individuals so requests, or if any of the conditions stated in paragraph (a)(1) of this section is no longer satisfied. Upon withdrawal, the covered attorney shall not represent any of the individuals in the matter that was the subject of the mediation unless each individual consents.

(d) [Reserved]

### § 776.39 Evaluation for use by third persons.

(a) A covered attorney may provide an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) The covered attorney reasonably believes that making the evaluation is compatible with other aspects of the covered attorney's relationship with the client; and

(2) The client provides informed consent, confirmed in writing.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by § 776.25 of this part.

(c) [Reserved]

### § 776.40 Meritorious claims and contentions.

(a) A covered attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A covered attorney representing an accused in a criminal proceeding or the respondent in an administrative proceeding, that could result in incarceration, discharge from the Naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding as to require that every element of the case is established.

(b) [Reserved]

### § 776.41 Expediting litigation.

(a) A covered attorney shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client.

(b) [Reserved]

### § 776.42 Candor and obligations toward the tribunal.

(a) A covered attorney shall not knowingly:

(1) Make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the covered attorney;

(2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel;

(3) Offer evidence that the covered attorney knows to be false. If a covered attorney, the attorney's client, or a witness called by the covered attorney, has offered material evidence and the covered attorney comes to know of its falsity, the covered attorney shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A covered attorney may refuse to offer evidence, other than the testimony of an accused in a criminal matter, that the covered attorney reasonably believes is false; or

(4) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

(b) A covered attorney who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraph (a) of this section continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by § 776.25 of this part.

(d) In an ex parte proceeding, a covered attorney shall inform the tribunal